

## INITIAL APPEARANCE/ARRAIGNMENT ON AN INDICTMENT/INFORMATION

*[Use this form **only** if the defendant has not appeared previously in federal court in this district on this/these charge(s) and is charged in an indictment or information.]*

**[Note:** *If you have any doubts about the defendant's ability to speak and understand English, then consider using a certified interpreter in accordance with 18 U.S.C. § 1827. If a certified interpreter is used, then no record needs to be made about the interpreter's qualifications. Be sure to swear the interpreter.*]

1. "This is the case of the United States of America versus (*name of defendant*). Are you (*defendant's name*)? I am (*state your name*)."
2. *[Either summarize the charge(s) against the defendant or have the prosecutor do so. If you summarize the charges, say]* "You've been charged in an indictment/information with

*[Here are some examples.]*

- (a) conspiracy to manufacture/distribute (*name of drug*)."
  - (b) possession of (*name of drug*) with the intent to distribute."
  - (c) unlawfully reentering the United States after you were deported."
  - (d) possession of a firearm after you were convicted of a felony."
  - (e) possession of a firearm while you were an unlawful user of drugs."
  - (f) possession of a firearm after you were convicted of domestic abuse."
3. *[Ask the defendant]* "Do you have a copy of the indictment/information?"  
*[If not, make sure a copy of the indictment/information is provided to the defendant.]*

*[Ask the defendant]* "Would you please state our full name? How old are you? How far did you go in school?"

[Where it does not appear English is the defendant's native language, say] "Is (*Spanish*) your native language? Are you able to hear and understand what the interpreter is saying to you in (*Spanish*)? If you have problems hearing or understanding anything that comes up during this hearing, would you please let me know?"

[Ask the defendant] "Within the past 24 hours, have you used or taken any **alcohol, drugs, or medication**?" [If "yes," then say] "Do you think this might affect your ability to understand the legal matters we'll be talking about at this hearing today?"

[Tell the defendant] "I now will tell you about certain of your constitutional rights."

#### [ADVICE OF RIGHTS]

4. "You have the right to remain silent. This means you don't have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you. Therefore, I strongly suggest that you not say anything to anyone unless you and your lawyer decide it's in your best interests to do so. If you've already given a statement, you don't have to say anything else. If you decide to go ahead and make a statement, you have the right to stop at any time."
5. "Do you understand your right to remain silent?"
6. "You also have the right to be represented by a lawyer at every stage of this case. If you need some time to find a lawyer, I'll give you that time. If you want a lawyer but can't afford to hire one, I'll appoint one to represent you. If I appoint a lawyer to represent you, the lawyer would represent only you in this case, but the court would pay the lawyer's fees and expenses."
7. "Do you understand?"

#### [REPRESENTATION]

8. “Are you able to hire your own lawyer?” [If “yes,” then go to paragraph 8(c). If “no,” then say] “Would you like me to appoint one to represent you?” [If “yes,” then ask] “Has the defendant completed a financial affidavit?” [and go to paragraph 8(a) or 8(b), as appropriate. If “no,” then go to paragraph 8(d).]

(a) [*If a completed financial affidavit IS available*, then review the financial affidavit and say one of the following things.]

(1) [*If a panel lawyer or federal defender is present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed your financial affidavit, and find that you’re entitled to court-appointed counsel. I hereby appoint (name of lawyer) to represent you. Is defense counsel prepared to proceed with the arraignment?” [If “yes,” then go to *paragraph 9 on page 5*. If no, go to *paragraph 14 on page 6*.]

(2) [*If a lawyer is not present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed your financial affidavit, and find that you’re entitled to court-appointed counsel. I direct the Clerk of Court to appoint a lawyer to represent the defendant either from the federal defender’s office or from the panel of lawyers qualified to handle this type of case.” [Go to *paragraph 14 on page 6*.]

(3) [*If the defendant does not qualify for court-appointed counsel, then say*] “I find the defendant is not entitled to court-appointed counsel based on (state reason, such as level of income or available assets).” [Ask the defendant about his/her plans for retaining a lawyer, then, go to *paragraph 14 on page 6*.]

(b) [*If a completed financial affidavit IS NOT available*, then say one of the following things.]

(1) [*If a panel lawyer or federal defender is present, then say*] “I hereby appoint (name of lawyer) to represent you.” [Then say] “This

appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [Tell the defendant] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Then ask lawyer] “Are you prepared to proceed with the arraignment?” [If “yes,” then go to paragraph 9 on page 5. If “no,” then say] “The arraignment in this case is scheduled for (schedule arraignment).” [Go to paragraph 14 on page 6.]

(2) [If a lawyer is not present, then say] “I order that a lawyer be appointed to represent the defendant from the list of lawyers qualified to handle this type of case.” [Then say] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [Tell the defendant] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Go to paragraph 14 on page 6.]

(c) [If the defendant does not want the court to appoint a lawyer for her/him because (s)he has hired or intends to hire a lawyer]

(1) [If the lawyer is present, then say] “Is defense counsel prepared to proceed with the arraignment?” [If “yes,” then go to paragraph 9 on page 5. If “no,” then say] “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 14 on page 6.]

(2) [If the lawyer is not present or has not yet been retained, make a record on the subject, and then say] “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 14 on page 6.]

(d) *[If the defendant does not want the court to appoint a lawyer for her/him because (s)he wants to represent him/herself, then say]* “Although you may have a constitutional right to represent yourself in this case, you will have to convince me that you are competent to do so before I will allow you to proceed without a lawyer. I strongly suggest that you have a lawyer represent you in this case.” *[Make a record on the defendant’s competence to represent him/herself, and then, as appropriate, either proceed with the arraignment (by going to paragraph 9), or say “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 14 on page 6.]*

## [ARRAIGNMENT]

9. *[Ask the defendant]* “Are you correctly named in the indictment/information, with your name spelled correctly *[ask the following for Hispanic names only]* and in the correct order?”
10. “Would you like me to formally read the indictment/information to you on the record?” *[Choose either paragraph 10(a) or 10(b).]*
  - (a) *[If “yes,” then read the indictment/information to the defendant.]*
  - (b) *[If “no,” then ask defense counsel]* “Do you waive formal reading of the indictment/information?”
11. *[Ask the prosecutor]* “Would you advise the defendant of the statutory penalties that would apply if (s)he were to be convicted on this/these charge(s)?”
12. *[Ask the defendant]* “Do you generally understand what you’ve been charged with? How do you plead to Count I?” *(Count II, etc.)*
13. “Your plea(s) of not guilty is/are accepted. This case is scheduled for trial before the Honorable *(name of judge)* on *(date of trial)*. Do the parties wish to enter into the standard discovery stipulation?” *[Choose either paragraph 13(a) or 13(b).]*

(a) *[If both say “yes,” then say]* “Very well, I will enter Judge (*name of judge*)’s standard trial-setting order and discovery stipulation order.” *[Go to **paragraph 14.**]*

(b) *[If either says “no,” then say]* “Very well, I will enter Judge (*name of judge*)’s standard trial-setting order, but without the standard discovery stipulation. Discovery in this case will be governed by the Federal Rules of Criminal Procedure and federal statutory and case law concerning discovery.” *[Go to **paragraph 14.**]*

#### [DETENTION]

14. *[Ask the prosecutor]* “Has the issue of detention been decided during an earlier proceeding?”*[If “yes,” then this would conclude the hearing. If “no,” then go to paragraph 15]*

15. *[Ask the prosecutor]* “Is there a detainer against the defendant?”

(a) *[If “no,” then go to paragraph 16.]*

(b) *[If “yes,” then say]* “I hereby order the defendant detained without a hearing, since the defendant won’t be released from custody in any event, although I’ll hold a detention hearing if the defendant’s lawyer requests one.” *[If a lawyer for the defendant is present, ask him/her]* “Do you want a detention hearing scheduled at this time?” *[If “yes,” go to paragraph 16. If “no,” then this would conclude the hearing.]*

16. “What’s the government’s position on detention?” *[If the government does not ask for detention, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her lawyer, and this would conclude the hearing. If the charge is **not for a crime for which detention is presumed** and the government asks for detention, then go to paragraph 17. If the charge is **for a crime for which detention is presumed** and the government asks for detention, then go to paragraph 18 or 19, as appropriate.]*



17. *[If the charge **is** for a crime for which detention is presumed, go to paragraph 18 or 19, as appropriate. If the charge **is not** for a crime for which detention is presumed, then ask] “Does the government believe it is entitled to a detention hearing?” [If “yes,” then ask] “What’s the response of defense counsel to the request for a detention hearing?”*
- (a) *[If the government **is not** entitled to a detention hearing, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her lawyer. This would conclude the hearing.]*
- (b) *[If the government **is** entitled to a detention hearing, then go to paragraph 18 or 19, as appropriate.]*
18. *[If the government is entitled to a detention hearing **and the defendant waives his/her right to a detention hearing** at this time, then order him/her detained. This would conclude the hearing.]*
19. *[If the government is entitled to a detention hearing, **and the defendant wants a detention hearing**, then schedule a detention hearing in three business days, or earlier if the government will agree to an earlier date, or for a later date if the defendant’s lawyer requests more time. This would conclude the hearing.]*
20. *[If you release the defendant, say] “If you violate your bond, I could issue in a warrant for your arrest, revoke your pretrial release, and have you prosecuted for contempt. If you commit a crime while on release, you could be given an additional sentence of up to 10 years in prison. Tampering with, threatening, or attempting to intimidate an informant, witness, juror, or officer of the court is punishable by up to 10 years in prison. Failure to appear is punishable by up to 15 years in prison.”*

**[ADJOURNMENT]**